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Written statement* submitted by the Association for Progressive Communications (APC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Online Spaces for Freedom of Expression under Threat in Malaysia*

The Association for Progressive Communications (APC) and Persatuan Kesedaran Komuniti Selangor (EMPOWER) are concerned over threats to the exercise of freedom of expression online in Malaysia.

EMPOWER has conducted legal and media research covering the period of 1 January 2014 to 31 March 2015 under the APC IMPACT (India, Malaysia, Pakistan Advocacy for Change through Technology) project. While freedom of expression online is guaranteed under Article 10 of the Federal Constitution and Article 3(3) of the Communications and Multimedia Act 1998, these guarantees exist within an ecosystem of laws and state-sanctioned actions by non-state actors which restrict this right in practice.

From the research, we can discern a general trend towards more restrictions and monitoring of expression online. The 2015 amendments to the Sedition Act 1948 were the cause of great concern among human rights defenders and civil society. The amendments include a provision that empowers the Session Court to prohibit a person from accessing any "electronic device", with no definition as to what would constitute an "electronic device". As a penalty, it is disproportionate to the alleged crime and opens the door to arbitrary interpretations.

As well, causing seditious material to be published and reproducing or propagating seditious material are now offences. Under this amendment, sharing content over social networking sites such as Twitter and Facebook may be considered to be propagation. These broad and vague terms may also make it an offence for journalists, activists and ordinary people to quote allegedly "seditious words" when commenting on or criticising them in any publication.

In October 2014, the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression; on the rights to freedom of peaceful assembly and of association; on the situation of human rights defenders; and on the independence of judges and lawyers expressed serious concern about the prosecutions under the Sedition Act of 1948 of individuals, including members of parliament, politicians, political activists, human rights defenders, academics, lawyers, students and journalists, for actions that seem to be a legitimate exercise of the right to freedom of opinion and expression, as set forth in article 19 of the Universal Declaration of Human Rights (UDHR). They also noted that the Sedition Act further has a detrimental impact on the exercise of the right to freedom of association, as set forth in article 20 of the UDHR.[1]

The Special Rapporteurs also noted that the Government of Malaysia "accepted in principle" recommendations during its Universal Periodic Review in 2013 to repeal the Sedition Act, and requested the Government to indicate what measures have been taken in relation to this commitment.

The Government of Malaysia replied that the Sedition Act is needed to strengthen national harmony and enhance peace and security. However, we note that the law is being used to arrest individuals for the legitimate exercise of their right to freedom of expression in cases that do not pose an immiment threat of incitement to violence.[2]

In April 2015, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein urged the Government of Malaysia to withdraw its proposed amendments to the 1948 Sedition Act, warning that the new provisions would seriously undermine freedom of expression and opinion in the country, in breach of Malaysia's Federal Constitution and its international human rights obligations.[3] The High Commissioner's statement noted that the UN Human Rights Office has long urged Malaysia to either repeal the 1948 Sedition Act or to bring it in line with international human rights standards, and the Government itself had committed to repealing the Act during its 2013 UPR. High Commissioner Zeid also urged the Government to review the cases of all those who have been charged under the Sedition Act.

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1 https://spdb.ohchr.org/hrdb/28th/public_-_UA_Malaysia_01.10.14_%286.2014%29.pdf

2 https://spdb.ohchr.org/hrdb/28th/Malaysia_14.10.14_%286.2014%29.pdf

3 www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15810&LangID=E

The Sedition Act is only one of the many laws used to restrict freedom of expression online. During the research period covered by the APC IMPACT project, internet users have been reported, investigated, arrested or prosecuted under the Penal Code (including provisions on offences related to religion and criminal defamation), the Official Secrets Act 1972, the Syariah Criminal Offences (Federal Territories) Act 1997, provisions of the Communications and Multimedia Act, and even the Educational Institutions (Discipline) Act 1976.

In many of these laws, the terms used to define the offence are very broad and vaguely worded; for example, terms such as "seditious tendency" and "ill will" are used. Limitations on freedom of expression should be based on the intention and likelihood of inciting violence, as well as having the condition of a direct and immediate connection between the expression and the likelihood or occurrence of such violence. Instead, due to the broadly defined offences, persons investigated or charged under the Sedition Act during the research period included a 17-year-old student for "liking" a Facebook page and a Muslim preacher for allegedly insulting the Sultan of Selangor.

On the other hand, clear and immediate threats to women and journalists, such as the rape threats made against a female journalist over her video commentary on *hudud*, do not seem to be a priority.

In an environment of increasing intolerance towards differences in opinion, the Government of Malaysia has a responsibility to protect the right to freedom of expression as an integral component of democratic processes and to promote civil dialogue. Clamping down on expression will simply serve to cut off the ability of the people to work towards common ground and worsen existing tensions.

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*Persatuan Kesedaran Komuniti Selangor (EMPOWER), an NGO without ECOSOC status, also shares the view expressed in this statement.